***THE HON'BLE SRI JUSTICE V.V.S.RAO**

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+WRIT PETITION Nos. 17035 OF 1999,

W.P.Nos.6422, 11008 OF 2000,

W.P.Nos.14626, 18890 OF 2002

W.P.Nos.2052, 4097, 6678, 6681, 6802, 11834, 11840 OF 2004

W.P.Nos.2070, 4042, 5563, & 5926 OF 2005.

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%Dated 28-10-2005

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Writ Petition No: 17035 of 1999

Y.Venkateswar Rao, S/o.Seshaiah, Occ:Business,

IL-24 Licensee of M/s.Kanaka Durga Wines, Paloncha,

Khammam District, and others.

… Petitioners.

VERSUS

$ The Prohibition & Excise Superintendent, Khammam District,

and another. .

… Respondents.

! Counsel for Petitioners: Mr.Amarnath Goud Thodupunuri

^Counsel for Respondents: G.P for Excise

Mr.Polisetti Radhakrishna

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Writ Petition No: 6422 of 2000

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M/s.Urvasi Wines, Narsapuram ,G.V.Subba Rao, Rep by its Proprietor
R/o. Palakole. S/o. Naganna
Licence No.23/99-2000, and others.

..... Petitioners

VERSUS

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$ Narsapuram Municipal Council Rep by its Commissioner,
Narsapuram

.....Respondent

! Counsel for Petitioners: Mr.Venkateswara Rao Kadiam

^Counsel for Respondent: Mr.S.Nageswara Reddy

Writ Petition No: 11008 of 2000

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Sri Sai Sudha Wines, Rep. by its Mg Partner,

K.V.R.S.N. Raju, S/.o. Appalaraju,
Linence No. 582/98-99. Bhimavaram, west Godvari District.

and others.

..... Petitioners

VERSUS

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$ Bhimavaram Municipality, Rep. by its Commissioner,
Bhimavaram, West Godavari District.

.....Respondent

! Counsel for the Petitioners: Mr.Ch.Dhanamjaya

^ Counsel for the Respondent : Mr.S.Nageswara Reddy

Writ Petition No: 14626 of 2002

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A. Maheswara Rao, S/o. Appa Rao,
R/o. D. No. 23-31-4, Beach Road, Visakhapatnam.
Licencee of Jaya Durga Wines.

..... Petitioner

VERSUS

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$ Visakhapatnam Municipal Corporation, Rep. by its Commissioner,
Visakhapatnam.

.....Respondent

! Counsel for the Petitioner: Mr.A.Jagannatha Rao

^ Counsel for the Respondent : Mr.N.Ranga Reddy

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Writ Petition No: 18890 of 2002

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T.S.Prasad, S/o.Subba Rao,
D.no.2-37-1, R.T.C. Bus Stand, Kakinada,
E.G.Dist., and others.

..... Petitioners

VERSUS

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$ The Commissioner,
Kakinada Municipality, Kakinada,
East Godavari District.

.....Respondent

! Counsel for the Petitioners: Mr.A.Jagannatha Rao

^ Counsel for the Respondent : Mr.S.Nageswara Reddy

Writ Petition No: 2052 of 2004

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Ch.Surya Prakash Babu, s/o Suryanarayana, r/o 13-1-31,

M/s Balaji Wines,
Main Road, Ramachandrapuram,
E.G.District., and others.

..... Petitioners

VERSUS

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$ Ramachandrapuram Municipality, Ramachandrapuram,
E.G.District, rep by its commissioner.

.....Respondent

! Counsel for the Petitioners: Mr.A.Jagannatha Rao

^ Counsel for the Respondent: Mr.S.Nageswara Reddy

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Writ Petition No: 4097 of 2004

M. Rajendra Kumar, S/o Nagaraju,
Srinivasa Theatre Road Ongole, Prakasam District M/s. Hanuman Wines
and others.

… Petitioners.

VERSUS

$ Ongole Municipality, Ongole, Prakasam District, rep. by its

Commissioner.

… Respondent.

! Counsel for the Petitioners: Mr.A.Jagannatha Rao

^ Counsel for the Respondent: Mr.S.Nageswara Reddy

Writ Petition No.6678 of 2004

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Koneru Srinivas, s/o Subba Rao,
Drawaka Road, Nuzvid, Krishna District,
Licencee of M/s.Pavan Bar and restaurant, and others.

…Petitioners

VERSUS

$ Nuzvid Municipality, Nuzvid,

Krishna District,

Rep. By its Commissioner.

…Respondent

! Counsel for Petitioners: Mr.A.Jagannadha Rao

^Counsel for Respondent: Mr.S.Nageswara Reddy.

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Writ Petition No.6681 of 2004

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G.Srinivasa Rao, S/o.G.Satyanarayana,

Beside RTC Complex,

Bobbili, Vizianagaram District,

Licencee of M/s.Lakshmi Bar and Restaurant.

…Petitioner

VERSUS

$ Bobbili Municipality, Bobbili,

Vizianagaram District,

Rep. By its Commissioner.

…Respondent

! Counsel for Petitioner: Mr.A.Jagannadha Rao

^Counsel for Respondent: Mr.S.Nageswara Reddy.

Writ Petition No.6802 of 2004

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N.Satyanarayana, S/o.Manohar Rao,

Kakinada, East Godavari District,

Licensee of M/s.Venkateswara Wines, and others.

…Petitioners

VERSUS

$ Kakinada Municipality, Kakinada,

East Godavari District,

Rep. By its Commissioner.

…Respondent

! Counsel for Petitioners: Mr.A.Jagannadha Rao

^Counsel for Respondent: Mr.S.Nageswara Reddy.

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Writ Petition No.11834 of 2004

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B.Nagaiah, S/o.Saidulu,

R/o.Near Bombay Time House,

Suryapet, Nalgonda District,

Licencee of M/s.Kamakshi Wines, and others.

…Petitioners

VERSUS

$ Suryapet Municipality, Suryapet,

Nalgonda District,

Rep. By its Commissioner.

…Respondent

! Counsel for Petitioners: Mr.A.Jagannadha Rao

^Counsel for Respondent: Mr. Polisetti Radha Krishna.

Writ Petition No.11840 of 2004

-

M.Nagesh, S/o.Sitharamulu,

Suryapet, Nalgonda District, D.No.1-5-112,

Licencee of M/s.Brundavan Bar, and others.

…Petitioners

VERSUS

$ Suryapet Municipality, Suryapet,

Nalgonda District,

Rep. By its Commissioner.

…Respondent

! Counsel for Petitioners: Mr.A.Jagannadha Rao

^Counsel for Respondent: Mr. Polisetti Radha Krishna.

Writ Petition No.2070 of 2005

-

M.Srinivasa Swamy, S/o.Someswara Rao,

Occ: Business, Fish Market, Bhimavaram, West Godavari District,

M/s.Sri Vamsee Krishna Wines, and others.

…Petitioners

VERSUS

$ Bhimavaram Municipality, Bhimavaram,

West Godavari District,

Rep. By its Commissioner.

…Respondent

! Counsel for Petitioners: Mr.S.V.Ramana.

^Counsel for Respondent: Mr.S.Nageswara Reddy, SC for Municipality.

Writ Petition No.4042 of 2005

-

K.Kanaka Raju, S/o.Satyanarayana Murthy,

Occ:Business, Bhimavaram, West Godavari District,

M/s.Sri Vijaya Bar and Restaurant, and others.

…Petitioners

VERSUS

$ Bhimavaram Municipality, Bhimavaram,

West Godavari District,

Rep. By its Commissioner.

…Respondent

! Counsel for Petitioners: Mr.A.Jagannadha Rao.

^Counsel for Respondent: Mr.S.Nageswara Reddy.

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Writ Petition No.5563 of 2005

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K.V.S.Srinivas, S/o.Veera Rao,

Occ: Business, Licensee of Surya Wines Undi Road,

Bhimavaram, West Godavari District.

…Petitioner

VERSUS

$ Bhimavaram Municipality, Bhimavaram,

West Godavari District,

Rep. By its Commissioner.

…Respondent

! Counsel for Petitioner: Mrs.G.Jhansi.

^Counsel for Respondent: Mr.S.Nageswara Reddy.

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Writ Petition No.5926 of 2005

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P.Ravindra, S/o.T.V.G.Swaraj,

R/o.Bhimavaram,

West Godavari District,

M/s.Krishna Beer, Bar and Restaurant.

…Petitioner

VERSUS

$ Bhimavaram Municipality, Bhimavaram,

West Godavari District,

Rep. By its Commissioner.

…Respondent

! Counsel for Petitioner: Mr.S.V.Ramana.

^Counsel for Respondent: Mr.S.Nageswara Reddy.

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>HEAD NOTE:

? Cases referred

1. 1980 (1) An.W.R. 288
2. 2001 (3) ALD 13 (SC) = AIR 2001 SC 1356
3. AIR 1999 SC 635
4. (1979) 1 SCC 137
5. AIR 1988 SC 850
6. 1989 (1) Supplement SCC 347
7. 1995 (1) SCC 474
8. AIR 1954 SC 282

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No. 17035 OF 1999,

W.P.Nos.6422, 11008 OF 2000,

W.P.Nos.14626, 18890 OF 2002

W.P.Nos.2052, 4097, 6678, 6681, 6802, 11834, 11840 OF 2004

W.P.Nos.2070, 4042, 5563, & 5926 OF 2005.

Dated: 28-10-2005

Writ Petition No: 17035 of 1999

Y.Venkateswar Rao, S/o.Seshaiah, Occ:Business,

IL-24 Licensee of M/s.Kanaka Durga Wines, Paloncha,

Khammam District, and others.

… Petitioners.

VERSUS

The Prohibition & Excise Superintendent, Khammam District,

and another. .

… Respondents.

Writ Petition No: 6422 of 2000

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M/s.Urvasi Wines, Narsapuram ,G.V.Subba Rao, Rep by its Proprietor
R/o. Palakole. S/o. Naganna
Licence No.23/99-2000, and others.

..... Petitioners

VERSUS

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Narsapuram Municipal Council Rep by its Commissioner,
Narsapuram

.....Respondent

Writ Petition No: 11008 of 2000

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Sri Sai Sudha Wines, Rep. by its Mg Partner,

K.V.R.S.N. Raju, S/.o. Appalaraju,
Linence No. 582/98-99. Bhimavaram, west Godvari District.

and others.

..... Petitioners

VERSUS

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Bhimavaram Municipality, Rep. by its Commissioner,
Bhimavaram, West Godavari District.

.....Respondent

Writ Petition No: 14626 of 2002

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A. Maheswara Rao, S/o. Appa Rao,
R/o. D. No. 23-31-4, Beach Road, Visakhapatnam.
Licencee of Jaya Durga Wines.

..... Petitioner

VERSUS

-

Visakhapatnam Municipal Corporation, Rep. by its Commissioner,
Visakhapatnam.

.....Respondent

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Writ Petition No: 18890 of 2002

-

T.S.Prasad, S/o.Subba Rao,
D.no.2-37-1, R.T.C. Bus Stand, Kakinada,
E.G.Dist., and others.

..... Petitioners

VERSUS

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The Commissioner,
Kakinada Municipality, Kakinada,
East Godavari District.

.....Respondent

Writ Petition No: 2052 of 2004

Ch.Surya Prakash Babu, s/o Suryanarayana, r/o 13-1-31,

M/s Balaji Wines,
Main Road, Ramachandrapuram,
E.G.District., and others.

..... Petitioners

VERSUS

-

Ramachandrapuram Municipality, Ramachandrapuram,
E.G.District, rep by its commissioner.

.....Respondent

Writ Petition No: 4097 of 2004

M. Rajendra Kumar, S/o Nagaraju,
Srinivasa Theatre Road Ongole, Prakasam District M/s. Hanuman Wines

and others.

… Petitioners.

VERSUS

Ongole Municipality, Ongole, Prakasam District, rep. by its

Commissioner.

… Respondent.

Writ Petition No.6678 of 2004

Koneru Srinivas, s/o Subba Rao,
Drawaka Road, Nuzvid, Krishna District,
Licencee of M/s.Pavan Bar and restaurant, and others.

…Petitioners

VERSUS

Nuzvid Municipality, Nuzvid,

Krishna District,

Rep. By its Commissioner.

…Respondent

Writ Petition No.6681 of 2004

G.Srinivasa Rao, S/o.G.Satyanarayana,

Beside RTC Complex,

Bobbili, Vizianagaram District,

Licencee of M/s.Lakshmi Bar and Restaurant.

…Petitioner

VERSUS

Bobbili Municipality, Bobbili,

Vizianagaram District,

Rep. By its Commissioner.

…Respondent

Writ Petition No.6802 of 2004

N.Satyanarayana, S/o.Manohar Rao,

Kakinada, East Godavari District,

Licensee of M/s.Venkateswara Wines, and others.

…Petitioners

VERSUS

Kakinada Municipality, Kakinada,

East Godavari District,

Rep. By its Commissioner.

…Respondent

Writ Petition No.11834 of 2004

B.Nagaiah, S/o.Saidulu,

R/o.Near Bombay Time House,

Suryapet, Nalgonda District,

Licencee of M/s.Kamakshi Wines, and others.

…Petitioners

VERSUS

Suryapet Municipality, Suryapet,

Nalgonda District,

Rep. By its Commissioner.

…Respondent

Writ Petition No.11840 of 2004

M.Nagesh, S/o.Sitharamulu,

Suryapet, Nalgonda District, D.No.1-5-112,

Licencee of M/s.Brundavan Bar, and others.

…Petitioners

VERSUS

Suryapet Municipality, Suryapet,

Nalgonda District,

Rep. By its Commissioner.

…Respondent

Writ Petition No.2070 of 2005

M.Srinivasa Swamy, S/o.Someswara Rao,

Occ: Business, Fish Market, Bhimavaram, West Godavari District,

M/s.Sri Vamsee Krishna Wines, and others.

…Petitioners

VERSUS

Bhimavaram Municipality, Bhimavaram,

West Godavari District,

Rep. By its Commissioner.

…Respondent

Writ Petition No.4042 of 2005

-

K.Kanaka Raju, S/o.Satyanarayana Murthy,

Occ:Business, Bhimavaram, West Godavari District,

M/s.Sri Vijaya Bar and Restaurant, and others.

…Petitioners

VERSUS

Bhimavaram Municipality, Bhimavaram,

West Godavari District,

Rep. By its Commissioner.

…Respondent

Writ Petition No.5563 of 2005

-

K.V.S.Srinivas, S/o.Veera Rao,

Occ: Business, Licensee of Surya Wines Undi Road,

Bhimavaram, West Godavari District.

…Petitioner

VERSUS

Bhimavaram Municipality, Bhimavaram,

West Godavari District,

Rep. By its Commissioner.

…Respondent

Writ Petition No.5926 of 2005

-

P.Ravindra, S/o.T.V.G.Swaraj,

R/o.Bhimavaram,

West Godavari District,

M/s.Krishna Beer, Bar and Restaurant.

…Petitioner

VERSUS

Bhimavaram Municipality, Bhimavaram,

West Godavari District,

Rep. By its Commissioner.

…Respondent

HONOURABLE SRI JUSTICE V.V.S. RAO

WRIT PETITIION Nos.17035 OF 1999; 6422 and 11008 OF 2000; 14626 and 18890 OF 2002; 2052, 4097, 6678, 6681, 6802, 11834 and 11840 OF 2004; and 2070, 4042, 5563 and 5926 OF 2005.

COMMON ORDER:

A short, but interesting question, as to power of the Municipality or Municipal Corporation constituted under A.P.Municipalities Act, 1965 (for short 'the Municipalities Act') and/or the Hyderabad Municipal Corporations Act, 1955 (for short 'the HMC Act'), or Visakhapatnam Municipal Corporation Act, 1979, to insist upon a trade licence by the persons engaged in retail liquor business, arises for consideration. In all these writ petitions except in W.P.No.14626 of 2002, for the years 1997-1998 and 1998-1999, the petitioners obtained licences in Form IL-24 under A.P. Excise Act, 1968 (for short 'the Excise Act') and A.P. Indian Liquor and Foreign Liquor Rules, 1970 (for short 'the Excise Rules'). They paid requisite licence fee and rentals to Excise Department. Some of the petitioners also obtained licences under Section 263 of the Municipalities Act duly paying requisite annual licence fee ranging from Rs.200 to Rs.300. However, by the impugned notices, the municipalities demanded all the IL-24 licensees to pay the licence fee at the rate of 1% of rentals/excise licence fee paid by the petitioners. For instance, in a particular place the annual licence fee payable by IL-24 licensee is Rs.10 lakhs, such licensee is required to pay Rs.10,000/- as trade licence fee to the Municipality. In these writ petitions, the petitioners are aggrieved by the impugned notices requiring them to pay municipal trade licence fee at the rate of 1% of excise licence fee. Before noticing rival submissions, the events, which led to the issue of impugned notices by various municipalities, may be noticed.

Andhra Pradesh Municipalities Act came into force on 2.4.1965. Chapter-VI of the said Act (Sections 259 to 307) contains provisions for issue of licences and

collection of fees. Section 263 enumerates the purposes for which places may not be used without licences and provides for the publication of a notification by the Municipal council in that regard for the purposes specified in Schedule-IV. Whatever be the purport of the said provision or Schedule-IV, all the Municipalities were giving trade licences to retail/wholesale liquor shops on collecting normal annual licence fee. In 1986, the Government of A.P. issued a circular being Circular No.2/931 D (1) /86 dated 6.6.1986, directing all the Municipal Commissioners in the State to tap the existing tax and non-tax resources to improve the financial position of the municipalities. The Commissioner and Director of Municipal Administration was requested to review the levy and collection of various taxes periodically. He submitted a report to Government on 6.5.1993, based on which the Government appointed a Committee of Municipal Commissioners to study and submit a report on the fee structure of i) dangerous and offensive trades ii) fees in market and slaughter houses iii) building licence fee and layout fee, and iv) encroachment fee. The Committee of Municipal Commissioners in its report while proposing the rates of licence fee suggested minimum and maximum rates for dangerous and offensive trades. The Government considered the said report in their orders in G.O.Rt.No.21 Municipal Administration, dated 5.1.1996, and directed all the Commissioners of Municipalities to adopt the rates suggested by the Committee of Municipal Commissioners with effect from 1.4.1996.

It appears, the Government of A.P. created Vigilance and Enforcement Department as a part of the General Administration Department under the Director General and ex officio Principal Secretary to Government in GAD. The Vigilance Commission made discrete enquires and came to know that liquor shop owners were trading without trade licences under Section 521 of the HMC Act or under Section 263 of the Municipalities Act. The Vigilance Commission noticed that the Hyderabad Municipal Corporation was levying licence fee of Rs.1200/- to Rs.1800/- for retail and wholesale wine distributors since 1991 and that Visakhapatnam Municipal Corporation was levying licence fee of Rs.280/- for each shop since 1992, without revising the rates. It was also found that Nalgonda Municipality was collecting a sum of Rs.300/- as licence fee, which was not revised periodically. Having noticed that excise licence fee/ rentals have enormously gone up, the Vigilance Commission came to the conclusion that 1% of rental value on liquor shops would be reasonable licence fee to be levied by local bodies, to generate optimum revenue for the Municipality. Accordingly, the Director General of Vigilance and Enforcement issued a letter No.111/V&E-II/98, dated 26.11.1998 requesting the Principal Secretary to Government in Municipal Administration to issue necessary guidelines to local bodies for enhancement of licence fee for liquor shops “under dangerous and offensive trade” provisions, to a minimum of 1% of rentals subject to revision once in three years to optimize internal sources of revenue for the Municipalities.

The Principal Secretary to the Government in Municipal Administration Department in turn addressed a letter, dated 10.12.1998 to all the Commissioners. While enclosing a copy of the letter to the Director of Vigilance, he requested the Commissioners to take necessary action under the provision of “Dangerous and

Offensive" trade activity to levy the licence fee for liquor shops in Municipalities. In pursuance thereof, it is the case of all the Municipalities in these writ petitions that the Municipalities issued necessary notification under Section 263 (1) of the Municipalities Act and later issued demand notices to all the petitioners to pay trade licence fee at 1% of the rentals. In some of the counter affidavits filed by the Municipalities in these cases, apart from Government Orders and on the report of the Vigilance Department, reliance is also placed on Section 263 read with Schedule-IV of the Municipalities Act.

Insofar as W.P.No.14626 of 2002 is concerned, the petitioner obtained licence in Form IL-24 for the year 2002-2003 for running M/s. Jaidurga Wines. He was issued a demand notice by Visakhapatnam Municipal Corporation (sole respondent in the writ petition) calling upon the petitioner to pay licence fee of Rs.18,000/-, which is assailed in these proceedings. The writ petition is opposed by the Visakhapatnam Corporation stating that the Corporation passed resolution No.47 dated 17.11.2000 and 20.11.2000 to enhance licence fee pertaining to dangerous and offensive trade licences in accordance with Section 622 (2) of the HMC Act. The counter affidavit also refers to the report of the Vigilance Department. Reliance is also placed on Sections 516, 521, 528, 539, 596, 622, 623 and 625 of the HMC Act as applicable to the Visakhapatnam Municipal Corporation.

The learned counsel for the petitioners M/s. T. Amarnath Goud, A. Jagannadha Rao and O. Manohar Reddy, and learned Standing Counsel for Municipalities M/s. P. Radha Krishna, S. Nageswar Reddy, learned Standing Counsel for Visakhapatnam Corporation Sri N. Ranga Reddy and learned Government Pleader for Municipal Administration Sri P. Vinod made elaborate submissions, placing before this Court the rival points of view. It is essentially submitted by the learned counsel for the petitioners that the excise trade is entirely covered by the provisions of the A.P. Excise Act and relevant Excise Rules, which provide for payment of licence fee as prescribed and regulation of excise trade. The power to regulate, control and impose conditions on a holder of licence in Form IL-24 absolutely vest in the officials of the Excise Department, who alone are entitled to regulate the business. The Municipal Commissioner or Municipal Authorities have no such power to regulate or control the business in a liquor shop, and therefore, the Commissioner either under the Municipalities Act or under the HMC Act has no power to insist upon the trade licence by a liquor shop owner. They also pointed out that either Schedule-IV of the Municipalities Act or Schedule-P of the HMC Act do not specifically mention the liquor trade, and in the absence of any such mention, the Municipal Council, Municipal Corporation or the Commissioner is not vested with any power either to prescribe a trade licence or licence fee for a liquor shop covered by the appropriate licence issued by the Excise Department. Reliance is placed on a decision of this Court in **Sri Satyanarayana Trading Company v. Secretary and Special Officer** and decisions of the Supreme Court in **A.P. Bankers and Pawn Brokers Association v. Municipal Corporation of Hyderabad,** and **Secunderabad Hyderabad Hotel Owners Association v. H.M.C.**

The learned Standing Counsel for the Municipalities submitted that all the Municipalities published notifications prescribing the trades and the rates of licence fee for such trades in accordance with Section 263 and Schedule-IV of the Municipalities Act. They would also urge that liquor trade is a business, which squarely falls in entry (o) and entry (v) of Schedule-IV, and therefore, it is within the powers of the Municipalities prescribing trade licence for liquor shops and specify the amount of fees to be paid. The learned Standing Counsel for the Visakhapatnam Municipal Corporation Sri N. Ranga Reddy placed reliance on Section 521 of the HMC Act and on the notification published by the Commissioner of Municipal Corporation of Hyderabad under Section 521 (1) (e) (ii) of the HMC Act in support of the contention that liquor shops engaged in wholesale/retail trade are required to pay the licence fee, which is now revised as 1% of rentals. It is also pointed out that the notification issued by various Municipalities have not been specifically challenged before this Court. In support of their submissions they placed reliance on **Avinder Singh v. State of Punjab, Nagar Mahapalika, Bareilly v. State of U.P., Shroff and Co. v. Municipal Corporation of Greater Bombay** and **Khoday Distilleries Ltd., v. State of Karnataka**.

The only question is regarding the power of the Municipality and Municipal Corporation to prescribe trade licence and trade licence fee, in respect of the liquor shops covered by the licence issued by the Excise Department under relevant Excise laws. Section 263 (1) of the Municipalities Act reads as under.

> **263 (1) - Purposes for which places may not be used without licences**:- The council may publish a notification in the prescribed manner that no place within municipal limits or at a distance within three kilometers of such limits shall be used for any one or more of the purposes specified in Schedule IV without the licence of the Commissioner and except in accordance with the conditions specified therein:
>
> Provided that no notification shall take effect –
>
> a. until sixty days from the date of publication, and
>
> b. except with the previous sanction of the Government in any area outside the municipal limits.

A plain reading of the above provision would show that the power of the Council to publish a notification prohibiting any trade within 3 kms. of municipal limits without licence of the Commissioner, is restricted to the “purposes specified” in Schedule-IV. Schedule-IV consists of entries (a) to (v), of these, entry (o) and entry (v) read as under.

> entries (a) to (n) omitted.
>
> entry (o) – brewing beer, manufacturing arrack or other spirit containing alcohol whether denatured or not, by distillation;

entries (p) to (u) omitted.

entry (v) – in general, doing in the course of any industrial process anything, which is likely to be dangerous to human life or health or property;

Insofar as the Municipal Corporation is concerned sub-section (1) of Section 521 of the HMC Act reads as under.

521. - Certain things not to be kept and certain trades and operations not to be carried on, without a licence :-

1. Except under and in conformity with the terms and conditions of a licence granted by the Commissioner no person shall –

a. keep, in or upon any premises, for any purpose whatever'

i. any article specified in Part I of Schedule 'P'

ii. any article specified in Part II of Schedule 'P' in excess of the quantity of such article which may at any one time be kept in or upon the same premises without a licence.

b) keep, in or upon any premises, for sale or other than domestic use, any article specified in Part III of Schedule 'P';

c) keep, in or upon any building intended for or used as a dwelling or within fifteen feet of such building, cotton, in pressed bales or boars or loose, in quantity exceeding four cwts ;

d) keep or allow to kept in or upon any premises, horses, cattle or other four footed animals --

i. for sale ;

ii. for letting out on hire ;

iii. for any purpose for which any charge is made or any remuneration is received ; or

iv. for sale of any produce thereof ;

e) carry on, allow to be carried on, in or upon any premises --

i) any of the trades or operations connected with trade specified in Part IV of Schedule 'P' ;

i i) any trade or operation which in the opinion of the Commissioner is dangerous to life, health or property, or likely to create a nuisance either from its nature, or by reason of the manner in which, or the conditions under which, the same, is or is proposed to be carried on ;

f. carry on within the city or use any premises for the trade or

operation of a carrier.

Section 521 (1) of the HMC Act prohibits a person from carrying on a trade or prohibits storage of particular item “except under and in conformity with the terms and conditions of the licence granted by the Commissioner”. This provision refers to Schedule-P, which contains Part-I to Part-IV. Liquor trade as such is very conspicuous by absence in any of the Parts of Schedule-P. Be that as it is, Section 521(1)(e)(ii) of the HMC Act prohibits a person to carry on trade or operation, which in the opinion of the Commissioner is dangerous to life, health or property.

The learned Standing Counsel for various Municipalities and for Visakhapatnam Municipal Corporation placed considerable emphasis on entry (v) of Schedule IV of the Municipalities Act and Section 521(1)(e)(ii) of HMC Act, and submit that the trade in intoxicating liquor is dangerous and an offensive trade, and therefore, under Section 521(1)(e) of HMC Act and Section 263 of the Municipalities Act, it is well within the powers of the Municipal Council to prescribe trade licence and levy fees for the same. It is now well settled by reason of catena of decisions of the Supreme Court that intoxicating liquor is *res extra commercium,* and liquor, as a beverage, being dangerous and injurious to health, its trade is harmful to the society. Therefore, no citizen can claim a fundamental right to do business in intoxicating liquor. It is exclusive privilege of the State to deal in trade and it can create a monopoly in itself. It is permissible for the State to permit trade or business in liquor by parting with its privilege for a fee by granting licence to a person to deal in liquor in the area of manufacturing or selling. It is not necessary to refer to copious case laws on this. It would be suffice to make a reference to **Khoday Distilleries Limited v. State of Karnataka** (supra). The Constitution Bench after making a reference to the relevant earlier case law summarized the law relating to right to carry on trade in intoxicating liquor in para 60 (of SCC). The principles relevant for the purpose of this case are,

> (b) The right to practise any profession or to carry on any occupation, trade or business does not extend to practicing a profession or carrying on an occupation, trade or business which is inherently vicious and pernicious, and is condemned by all civilized societies. It does not entitle citizens to carry on trade or business in activities which are immoral and criminal and in articles or goods which are obnoxious and injurious to health, safety and welfare of the general public, i.e., *res extra commercium,* (outside commerce). There cannot be business in crime.
>
> (c) Potable liquor as a beverage is an intoxicating and depressant drink which is dangerous and injurious to health and is, therefore, an article which is *res extra commercium* being inherently harmful. A citizen has, therefore, no fundamental right to do trade or business in liquor. Hence the trade or business in liquor can be completely prohibited.
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> (g) When the State permits trade or business in the potable liquor with or without limitation, the citizen has the right to carry on trade or business subject to the limitations, if any, and the State cannot make discrimination between the citizens who are qualified to carry on the

trade or business.

(h) The State can adopt any mode of selling the licences for trade or business with a view to maximize its revenue so long as the method adopted is not discriminatory.

(j) The mere fact that the State levies taxes or fees on the production, sale and income derived from potable liquor whether the production, sale or income is legitimate or illegitimate, does not make the State a party to the said activities. The power of the State to raise revenue by levying taxes and fees should not be confused with the power of the State to prohibit or regulate the trade or business in question. The State exercises its two different powers on such occasions. Hence the mere fact that the State levies taxes and fees on trade or business in liquor or derives income from it, does not make the right to carry on trade or business in liquor a fundamental right, or even a legal right when such trade or business is completely prohibited.

(m) The restrictions placed on the trade or business in industrial alcohol or in medicinal and toilet preparations containing liquor or alcohol may also be for the purposes of preventing their abuse or diversion for use as or in beverage.

The licences issued by the State enable the petitioners to carry on trade in a retail sale of intoxicating liquor. To avail such licences, the petitioners are required under the Excise Act, and the Excise Rules, to abide certain conditions including payment of the licence fee as prescribed, giving a bank guarantee and executing an agreement. The provisions of the Excise Act or Excise Rules do not require a licensee to obtain any licence for opening a shop in any municipal area or in a Municipal Corporation. As business of retail sale in liquor is entirely controlled and regulated by the Excise Act and Excise Rules, unless the legislature specifically empowers the Municipal Council or Municipal Corporation to prescribe the trade licence and impose trade licence fee, it is not possible to accept any submission that Municipality can levy trade licence fee on liquor shops. Mere issuance of notification under Section 263(1) of the Municipalities Act, in the case of Municipalities, does not in any manner change this position. Indeed, as rightly contended by the learned Counsel for the petitioners, the power of the Municipal Council to issue a notification is available only in respect of the purposes mentioned in Schedule IV of the Act.

In **Sri Satyanarayana Trading Co., v. Secretary & Special Officer** (supra), this Court considered the question whether it is permissible for a Municipal Council to issue notification in respect of trade, which is not found in Schedule IV of the Act. In the said case, Nellore Municipal Council issued notification in respect of several items imposing licence fee on the business of gunny bags and storage/sale of cement. The said notification was assailed on the ground that Schedule IV read with Section 263 of the Municipalities Act does not confer the power on the Municipality to levy or impose licence fee by carrying on business in gunny bags. It was urged for the Municipal Council that gunny bags being a product of jute, falls within items of

'P' Schedule IV of the Act and therefore, the notification is *intra vires*. This Court rejected the contention observing as under.

> …But I find it difficult to accept this contention. Jute is a fibre extracted from some plants and item 'P' covers only jute in its stage as a raw material and it does not take in the products manufactured or made out of jute. For instance the item 'S' provides for a levy of licence-fee on selling or storing cotton wholesale or retail. It cannot said that all products made out of cotton like clothing material including shirts, dhotis, sarees or readymade dresses will be covered by the said item 'S'. If the legislature intended that the products of jute should also be covered by item 'P' they would have expressly provided so by including jute products in item 'P'. **As the provision relating to section 263 read that schedule IV relate to levy of licence-fee they have to be strictly construed and unless the language of the aforesaid provision expressly or by necessary implication provide for levy of licence-fee, the scope of the items mentioned in Schedule IV cannot be enlarged or extended on the supposed intention of the legislature.** In the instant case I do not think the word 'jute' can be read as jute and jute products as sought to be contended by the learned Government Pleader. I have therefore, no hesitation in rejecting the contention of the learned Government Pleader that gunny bags which are products of jute are covered by item 'P'.
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> (emphasis supplied)

This Court respectfully agrees with the above exposition of law and holds that the scope of various entries in Schedule IV cannot be enlarged and unless a particular trade is found mentioned in Schedule IV, Section 263(1) of the Municipalities Act does not enable the Municipal Council to levy or impose any trade licence fee on liquor shops.

The learned Standing Counsel for Municipalities placed reliance on **Avinder Singh v. State of Punjab** (supra), **Nagar Mahapalika, Bareilly v. State of U.P** (supra), and **Shroff and Co., v. Municipal Corporation of Greater Bombay** (supra), in support of the contention that it is permissible for the Municipality to impose trade licence fee on liquor trade. This Court is of the considered opinion that these three authorities do not in any manner help the learned Counsel for Municipalities. The first case herein deals with the tax on liquor bottles imposed by the Government of Punjab in accordance with the notification issued by the Government under Section 90(4) of the Punjab Municipalities Act, 1976. The said provision specifically enables the Government to impose tax, and accordingly the Government directed to collect a tax of Rs.1/- per bottle sold through liquor shops. The second case concerns octroi duty and the third case deals with entry duty imposed on import of liquor in Bombay. Indeed, the case from Punjab (supra) supports the view taken by this Court that unless and until, the legislature specifically confers power on the Municipal Council/Municipal Corporations, they cannot impose any trade licence fee on any trade they like. It must not be forgotten that Municipal Council/Corporation is creation of statute and it shall have to act in accordance with the statute and not beyond consigned powers.

Whether entry (v) of Schedule IV and Section 521(1)(e)(ii) of the HMC Act read with Section 263(1) of the Municipalities Act, enable to levy trade licence fee on the ground that trade in liquor is dangerous and an offensive trade? The answer must be in the negative. Entry (v) deals with "industrial process, which is likely to be dangerous to human life or health or property". It does not deal with any dangerous and offensive trade like liquor trade. In this context, the submission of the learned Counsel for the Municipalities that entry (o) in Schedule IV which deals with manufacturing of arrack or alcohol, permit the imposing of trade licence fee, cannot be accepted. Manufacturing of liquor is altogether different from the business by a person in retail selling of liquor under licence under Excise laws.

Coming to Section 521 of HMC Act, the Commissioner is empowered to grant licence permitting a person to carry on trade "only in conformity with the terms and conditions of the licence". Section 521(1) of HMC Act fell for consideration before the Supreme Court in **A.P.Bankers and Pawn Brokers Association v. Municipal Corporation of Hyderabad** (supra). The Supreme Court ruled that unless the Municipal Commissioner is able to regulate the trade, he is not entitled to insist upon the trade licence under Section 521(1) of HMC Act. The relevant observations are as follows (para 8 of ALD).

> It is admitted that the Notification is under Section 521 (e) (ii). Section 521 provides for "certain things not to be kept and certain trades and operations not to be carried on without a licence." Sub section (1) starts with the words "Except under and in conformity with the terms and conditions of a licence granted by the Commissioner." **Thus the whole purpose of Section 521 is to ensure that the Commissioner is in a position to regulate the trade or operation or to prevent things from being kept except on certain terms and conditions, which may be fixed by the licence. It, therefore, automatically follows that if there are no terms and conditions which can be imposed by a Commissioner or the Municipality in respect of a particular trade or operation then even if the Commissioner is of the opinion that that trade or operation is dangerous to life or health or property or that it is likely to create a nuisance he would not be able to regulate or control that trade or operation. Insistence on getting a licence, in such a case, would be a useless formality and would not be authorized by Section 521.**
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> (emphasis supplied)

Applying the above test to liquor trade when such trade is entirely governed by the Excise Act and Excise Rules and no authority is vested with any power either to prohibit, control or regulate liquor trade, it would be futile to contend that the Municipal Commissioner of Corporation can regulate a liquor trade by issuing a trade licence. As already observed hereinabove, under Excise Act or Excise Rules, the law has prescribed a competent authority, who alone is entitled to regulate liquor trade in accordance with law. The Municipalities Act or the HMC Act or the relevant schedules thereunder and relevant rules framed there under, do not in any manner authorize the Municipal Commissioner to regulate liquor trade. Applying the above test, it must be held that the provision requiring the petitioners to obtain a trade licence for doing business in retail sale of liquor is *ultra vires.*

In **A.P.Bankers and Pawn Brokers Association v. Municipal Corporation of Hyderabad,** it was further held:

> …However, it is not shown or averred that all shops are in residential areas inhabited by middle class and poor families or that all members of the Appellant Association issue advertisements or that all shops are in crowed areas. If one or two or some shops are set up on the thick of a residential locality inhabited by middle class or poor families or set up in a crowded place or issue an advertisement, the entire trade or occupation cannot be termed to be dangerous to life, health or property or likely to create a nuisance. **To be noted that the opening part of Section 521 talks of "trade and operations". Similarly Section 521(e)(i) also talks of trades and operations. However, Section 521(e)(ii) uses the word "trade or occupation". Thus if a shop or some shops are set up in crowded areas or require any regulation, then it would be a matter for regulating that particular shop or those particular shops by laying down appropriate conditions. Merely because a pawn-broker or a money-lender is likely to set up a shop in the thick of a residential locality or in a crowded place would be no ground for the Commissioner to come to a conclusion that the entire trade or occupation of money-lending and pawn-broking is dangerous or likely to create nuisance. It is clarified that this Court is not saying that the Commissioner cannot under Section 521(e)(ii) Notify a particular trade or operation, i.e., include all persons carrying on that particular trade or operation.**
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> (emphasis supplied)

Even assuming that the trade in liquor is dangerous and offensive trade for the purpose of Section 521(1)(e)(ii) of HMC Act, when once the State, which has exclusive privilege in dealing with intoxicating drinks, parts its privilege by giving a licence subject to certain conditions, it must be presumed that the regulatory regime under Excise Laws takes care of the dangerous and offensive nature of the trade and there is nothing that the Municipality or the Municipal Corporation can do it by insisting upon a trade licence. As held by the Supreme Court in **Khoday Distilleries Limited v. State of Karnataka** (supra), the restrictions placed on the trade by the conditions of licence either with regard to stock liquor to be stored, restrictions on the sale of liquor, etc., are also intended to prevent abuse or diversion for use.

If without there being any regulation by the Municipality/Corporation if the petitioners are compelled to pay the amounts, the same would amount to tax and not fees, as no service is required to be performed by the Municipality. "A tax" is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered. It is imposition without any special benefit to be conferred on the taxpayer, and it is generally collected for the purposes of general revenue. The "fees" is a charge for a special service rendered to individuals by several governmental agencies supposed to be based on the expenses incurred by such authority in rendering the service and there is always an element of "*quid pro quo*" (see **The Commissioner H.R.E V. L.T.Swamiar)**. The Commissioner of Municipality or the Commissioner of a Corporation can collect the trade licence fee from various trades mentioned in Schedule IV of Municipalities Act

or Schedule-P of HMC Act because Municipalities render certain services.

Insofar as IL 24 licence shop is concerned, the licence in Form IL 24 enables the licensee only to sell liquor in bottles for off site consumption i.e., purchaser is not permitted to consume liquor in the shop or near the shop. Therefore, there is no element of detriment to the sanitation or hygiene. In **Secunderabad Hyderabad Hotel Owners Association v. H.M.C** (supra), the increase in the licence fee for trade licence for running lodging houses/hotels, restaurants levied under Section 622 of HMC Act, was challenged in Supreme Court. *Inter alia*, it was contended that the increase of licence fee is in the nature of a tax and not fee, and therefore, levy is not valid. The Supreme Court considered the question whether trade licence fee is a tax or fees. Justifying the licence fee as being not excessive, the Supreme Court observed as under (para 8 of AIR).

> …The respondent-Corporation is required to inspect the premises in question in order to ensure that the conditions are complied with. It also has the responsibility for inspecting and supervising the sale of foodstuff to ensure that all the conditions of licence pertaining to the preparation and sale of such food are complied with. The respondent is also required to ensure cleanliness, removal of garbage and maintenance of hygiene in these premises. Undoubtedly, the Corporation has the general duty to provide scavenging and sanitation services including removal of garbage and maintaining hygienic conditions in the city for the benefit all persons living in the city. Nevertheless, hotels and eating houses by reason of the nature of their occupation, do impose an additional burden on the municipal corporation in discharging its duties of lifting of garbage, maintenance of hygiene and sanitation since a large number of persons use the premises either for lodging or for eating; the food is prepared in large quantity unlike individual households and the resulting garbage is also much more than what would otherwise be in the case of individual households…

As can be seen from the above observations, the business in running a hotel/restaurant results in the large accumulation of garbage and other waste material, which requires to be cleared/cleaned by the Municipal Corporation. In doing so, the Municipal Corporation would certainly incur expenditure for employing the necessary men and material. The same is not the case in the case of a liquor shop. Of course, if a person has a licence to run a Bar and Restaurant, it would be permissible for the Municipality/Corporation to levy trade licence fee on the restaurant. Insofar as a person who is running the retail liquor business with a proper licence is concerned, there is no regulation by the Municipality/Corporation and there is no service rendered by the Municipality. The submission in this regard that the Municipality/Corporation takes up the cleaning of the road, cleaning of the drainage canals, and therefore, there is element of service, cannot be accepted. The Municipality presumably collects property tax from the owners of the premises, where the liquor shop is established. The property tax paid by the owner of the premises would take care of service of cleaning the roads and cleaning the drainage canals. As the Municipalities Act and the Municipal Corporation Act do not confer any specific power on the Municipalities/Corporations to impose any tax or fees on the liquor trade, it is impermissible for these local bodies to levy any fees in the

name of trade licence fee, which they are not specifically authorized by the statute.

In the result, for the above reasons, these Writ Petitions are allowed, subject to condition that if any of the petitioners is running a Bar and Restaurant, they shall be liable to pay the trade licence fee. There shall be, in the circumstances, no order as to costs.

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(V.V.S.RAO, J)

28th October 2005

Note: LR copy to be marked.

B/o.

Js/vs